IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 706 OF 2006

1. Damodar Bitla (since deceased) ... Petitioner (Ori.Defendant)

1(a) Anusaya Damodar Bitla & ors. ... Petitioners

V/s

Louis Simon D'Souza ... Respondent (Ori.Plaintiff)

Mr. Kunal Bhange for the petitioners.

Mr. N.H. Matani holding for Z.K.Lakdawala for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 27TH FEB., 2006

P.C.:

1. Heard both sides. Perused the record.

2. The petition was filed by the petitioner tenant against the order passed by the lower appellate Court dated 7th Dec., 2005 dismissing the appeal and confirming the judgment and order passed by the Trial Court dated 5.5.2004 decreeing the plaintiff's suit for possession of the suit premises.

3. The plaintiff filed the suit against the petitioner defendant alleging that he was the owner and landlord of the suit property and petitioner defendant was monthly contractual tenant in the suit premises which consists of one room No.1 on ground floor in House No.116/E/B, Worli Village, Mumbai-400 025. According to the plaintiff, the petitioner defendant had acquired suitable and alternative accommodation at his native place where he has shifted alongwith his family and he has not been using the said premises for a period of more than six months preceding the date of filing of the suit. The plaintiff required the suit premises reasonably and bonafide for his own use and occupation. Hence the suit came to be filed.

The defendant contested the suit inter-alia challenging the allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits holding that the plaintiff had proved that the suit premises was reasonably and bonafide requires for his use and occupation. Consequent finding also came to be recorded that defendant will not suffer any hardship in the event of eviction decree is passed. However, it was held that the plaintiff had proved that the suit

premises was not used by the defendant immediately preceding the date of the suit and suit came to be decreed accordingly.

The appeal was carried to the lower appellate Court. After hearing both parties confirmed the decree passed by the lower Court on the ground that the suit premises was not used by the plaintiff for more than six months preceding the suit without any reasonable cause and further that it was required reasonably and bonafide for the plaintiff's own occupation. Consequently, the point of hardship was also held in favour of the plaintiff and appeal came to be dismissed. Hence the present petition.

5. At the outset, it must be noted that both the Courts below have recorded concurrent findings to the effect that the suit premises is required for the use and occupation of the plaintiff. In fact his evidence to the effect that his family consists of himself, his wife, two sons aged 30 and 27 years which are of marriageable age and a daughter of marriageable age are residing in the premises admeasuring 600 sq.ft. which is not adequate for them and in fact the marriages of his sons are delayed due to want of accommodation, has

gone unchallenged on record and, therefore, there is no dispute whatsoever that plaintiff has proved his bonafide.

6. On the other hand, the issue of comparative hardship is also seen to be adjudicated by both Courts below properly in the sense that the defendant's evidence is conspicuosly silent regarding any efforts to acquire suitable accommodation elsewhere. In fact the finding to the effect that the defendant is not using the suit premises without any reasonable cause for continuous period of six months prior to the suit is also recorded on the basis of available evidence. The learned counsel for the petitioner submitted that his ration card is still on the address of the suit premises. However, the fact that the ration card shows the address of the petitioner of the suit premises, would not be sufficient to hold that he still resides in the suit premises in absence of any other supporting evidence. Be that as it may, the fact remains that both the Courts below have recorded concurrent findings and appreciated the entire evidence in proper perspective and is found to be just, legal and proper.

In the result, there is no merit in the petition and it

stands dismissed with no order as to costs.

6. At this stage, the learned counsel for the petitioner makes a submission that he should be given some time to vacate the premises. However, when the evidence on record shows that he is not using the premises, there is no question of giving him time to vacate the premises. Hence the said request is rejected.

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